showed that the officers of the county at the same time recognised another. No error has been assigned to this part of the charge, and the verdict was for the plaintiff "for all the land lying in Cambria county, down to the line established by Mr. Given and E. A. Vickroy, in the year 1849." Now, if the jury had found any other line in this general way, and referred to by the evidence, oral or written, given on the trial, without describing it with reasonable certainty, it might have been bad, according to *Hagey* v. *Detweiler*, 11 Casey 409; *O'Keson* v. *Silverthorn*, 7 W. & S. 246. But these cases recognise it as settled that the verdict may describe a tract by reference to something of a permanent and public nature, as a recorded deed, or a diagram filed in court, like the draft of a road in the Quarter Sessions. Indeed, this court went much further, and held, in *Tyson* v. *Passmore*, 7 Barr 273, that a verdict for 82½ acres of land, being the land covered by the warrant of survey of July 1832, was sufficiently certain. If the verdict enables the court to give judgment, and the sheriff to deliver possession, where that is required in a *habere facias possessionem*, it will not be disturbed. *Oportet quod res certa deducatur in judicium*, but *id certum est quod certum reddi potest: Green* v. *Watrous*, 17 S. & R. 393. Now, nothing can well be stated more clearly falling within these principles than the public recorded boundary line of a county, made under an Act of Assembly, and filed with a plot in the office of the commissioners.

Judgment affirmed.

United States Circuit Court, District of South Carolina.

LIVINGSTON AND WIFE ET AL. *v.* JORDAN.

During the late civil war the courts of South Carolina had no jurisdiction over parties residing in Maryland by which their rights could be injuriously affected, although suit was commenced by said parties in the courts of South Carolina before the war, and the proceedings were in regard to land in that state. The jurisdiction, however it attached, was suspended during the war.

The stepfather as next friend of two infants filed a petition in chancery in South Carolina, asking a decree to confirm a certain sale of land of the infants, situate in South Carolina. After reference to a commissioner a decree of confirmation was made and a deed executed by the commissioner to the purchaser. The stepfather and infants resided in Maryland, and the petition set forth that the stepfather was guardian, but in fact both infants had at the time of filing the petition attained

the age at which guardianship ceased in Maryland, and both became *sui juris* by the laws of South Carolina before the decree. *Held*, that the court of equity had no jurisdiction to make the decree, and no title passed to the purchaser.

THIS was an action of trespass to try title. The plaintiffs, Mary Livingston (formerly McRa) and Julia McRa, in 1861 were possessed of certain land in South Carolina. On February 12th of that year their stepfather, Henry Oelrichs, as their next friend, filed a petition in the Court of Chancery of Sumter District, S. C., setting forth that the parties were citizens and residents of Maryland; that Oelrichs was the guardian of the infants in Maryland; that the infants were entitled to certain lands in South Carolina under the will of D. McRa; that said lands were now unproductive; that a contract of sale had been made for said lands subject to the leave of this court; and praying a decree that the contract of sale be approved and a conveyance be made accordingly.

A guardian *ad litem* was appointed by the Chancellor, and the case referred to a commissioner who, on 28th of March 1861, reported that Mary had arrived at the age of twenty-one years on February 16th 1861 (four days after the filing of the petition), and Julia was twenty on March 6th 1861; that Oelrichs had been guardian, but that by the laws of Maryland guardianship of female infants ceased at the age of eighteen years, and Oelrichs had been regularly discharged as guardian in 1859; and that the proposed sale would be for the benefit of the petitioners.

Upon this report the Chancellor, on March 29th 1861, decreed that the sale be made upon terms prescribed. On April 5th 1862 the commissioner reported that the purchaser had not complied with the terms of the decree within the time specified, but was now desirous of doing so, and on April 7th 1862 the Chancellor entered a decretal order that compliance by the purchaser with certain terms therein specified should be regarded as a compliance with the terms of the original decree, and thereupon the commissioner should execute a deed of conveyance of all the right, title, &c., of the said petitioners to the purchaser. The purchaser having complied with this order, a deed was made by the commissioner to him October 29th 1862. Defendant in this action was in possession under title derived from this deed.

Subsequently the commissioner reported that the fund was unproductive, and that the parties to whom it was due were

residents of Maryland, beyond the Confederate lines, and the money could not be remitted to them. Thereupon the court ordered the fund to be invested in Confederate bonds.

CHASE, C. J., charged the jury as follows:—This is an action of trespass upon the case to try title. There is very little in it for you to pass upon. The question of fact lies within a very narrow compass. The only question of importance in the case is a question of law.

It is very clear that this contract, made between Mr. Moses as solicitor and Mr. Robertson the purchaser, did not bind the plaintiffs. It was a contract without authority from them. No person has a right to intervene as a volunteer for a minor child, and make a contract for the sale of a minor's estate.

This is so clear that it needs no argument. If, however, as apparently in this case, a person does intervene and make such a contract, it may become binding by subsequent assent of the parties, on arriving at full age, or through proper proceedings in a court of equity.

There is no allegation in this case, that we have heard, of any such subsequent assent of these parties. You have heard the testimony of Chief Justice Moses. He stated distinctly there was no intercourse between him and these minor children in relation to this contract. It was made solely at the instance of their mother and stepfather. So far as their consent goes, therefore, it may be laid out of the case. The next question is, whether there is any jurisdiction in a court of equity of South Carolina to make a decree confirming the contract, or for the sale of the minors' estate. Upon that point we entertain very serious doubts.

Undoubtedly an infant may bring suit by next friend in a court of equity; and the court has jurisdiction in such a suit to make an order giving authority to sell the estate of the infant. There is no question upon that point. In this case, however, the suit was brought by the stepfather, representing himself as next friend of the minors; but he himself resides in Maryland, beyond the jurisdiction of the court in which the suit was brought. Though represented as the guardian of the minors, he was not such in fact. He had ceased to be the guardian of one, under the laws of Maryland, for more than two years, and of the other for nearly two. One of the heirs became of age, according to the laws of South

Carolina, four days after the suit was brought, and the other long before the final decretal order, under which the defendant claims title; and neither was ever brought formally into court.

As we have already said, we doubt upon the question of jurisdiction; but for the purposes of this case will rule that jurisdiction to confirm this contract made in behalf of the minors, or to pass the final decretal order under which the title was conveyed, did not exist. The defendant, if dissatisfied, may move in arrest of judgment, or for a new trial.

Under this ruling, gentlemen, your verdict must be for the plaintiff; for if there was no jurisdiction in the court, the defendant cannot protect himself by its decree.

It is proper to say, further, that although we put this case for the present upon the absence of jurisdiction in the state court to confirm or order the sale, there is another objection to the defendant's title, equally fatal.

The jurisdiction of the state court over the plaintiffs, whatever it was, terminated when the civil war broke out. Upon that point we entertain no doubt. As between parties residing in the state of South Carolina and parties residing in the states which adhered to the National Government, between whom war made intercourse impossible, there could be no jurisdiction in the courts of South Carolina, while the war continued, by which the rights of non-residents could be injuriously affected.

This ruling, indeed, applies only to the orders made during the war; it is decisive, however, of this case.

We charge you, gentlemen, that the courts of South Carolina had no jurisdiction of these plaintiffs, and no jurisdiction to make any order prejudicial to their rights during the war.

These instructions, gentlemen, leave nothing for your determination but the question of damages. The measure of damages must be the amount of net profits made by the defendant from the plantation. The defendant, in this case, is Mr. Jordan, not the original purchaser, Mr. Robertson. If you have heard any evidence of profits made by him, you will give damages to that extent.

The jury found for plaintiff; damages one cent, on which the court entered judgment, and issued a writ of *habere facias possessionem*.